IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 599 of 1991

with

FIRST APPEAL No 600 of 1991

with

FIRST APPEAL NO. 2082 OF 1994

AND

FIRST APPEAL NO. 2076 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO.LTD.

Versus

KRISHNAKUMAR KITTU NAIR

Appearance:

1. First Appeal No. 599 of 1991 & No. 600 of 1991

MR SUNIL B PARIKH for Petitioner

MR HR PRAJAPATI for Respondent No. 1

MR MC SHAH for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3
MS LILU K BHAYA for Respondent No. 4
DELETED for Respondent No. 5
RULE SERVED for Respondent No. 6
MR SANDIP C SHAH for Respondent No. 7
MR LR PUJARI, AGP for Respondent No. 12

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2. First Appeal No 2082 of 1994 & No.2076 of 1994

MR HR PRAJAPATI for appellants
MS AVANI S. MEHTA for respondent No.3
MS LILU BHAYA for respondent No.4
Respondent No.5 - Deleted
MR S.C. SHAH for respondents No. 6 and 11
MR LR PUJARI, AGP for respondent No.12

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 20/02/2001

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. These appeals arise from the common judgement and award dated 27th March 1991 passed by Motor Accident Claims Tribunal [Main], Ahmedabad in M.A.C. Petition Nos. 237 of 1983 and 238 of 1983, holding the appellant original respondent No.3 - National Insurance Co. Ltd. liable to pay Rs.1,62,025=00 together with costs and interest thereon at the rate of 12% per annum from the date of the petition to the claimant of M.A.C. Petition No. 237 of 1983, and to pay Rs.31,150=00 together with costs and interest at the rate of 12% per annum from the date of the petition to the claimant of M.A.C. Petition No. 238 of 1983.

2. The accident occurred on 22nd May 1983, at about 8.15 p.m., in front of the entrance gate of the Navrangpura post office on a footpath, when the respondent No.1 - claimant and his wife Ushaben were standing near the footpath with their daughters Daksha and Ami. At that time, one ambassador car bearing registration No. GJD 5856 came at a great speed, driven negligently and dashed against a moped, sugarcane machine and struck against the claimant and his daughter Daksha,

and also damaged the compound wall of a nearby bungalow of one Sharadbhai. The respondent No.1 - claimant was admitted in the V.S. Hospital (in the Neuro Surgical Ward), and treated for fracture of ribs and was ultimately discharged on 30-5-1983. Thereafter, he had undergone private medical treatment. According to this claimant, he suffered 40 to 50 per cent permanent disability. A claim of Rs. 2,00,000=00 was made for the permanent disability, Rs.70,000=00 for pain, shock and suffering, Rs.10,500=00 for actual loss of earnings for the period from 22-5-1983 to 6-9-1983, Rs.5,000=00 for transportation charges, Rs.2,000=00 for nutritious diet and Rs.7,900=00 for medicines etc. i.e. in all Rs.3,00,000=00 by way of compensation under all heads.

2.1 In the other case, the claimant put up a claim of Rs.1,50,000=00 by way of compensation under various heads, which included Rs.30,000=00 under the head pain, shock and suffering.

3. The motor vehicle originally belonged to the respondent No.1 and was insured by the respondent No.1 with the appellant - original respondent No.3 - National Insurance Co. Ltd. and also with the respondent No.4 The New India Insurance Co. Ltd. on 29-4-1983 after it was transferred to the deceased respondent No.5 - Swami Narayandasji on 27-4-1983.

3.1 The respondent No.1 in its written statement exh. 15 denied liability contending that on the date of the accident, the motor car did not belong to them and that, it was not in their control or use since it was sold away on 27-4-1983 by the respondent No.1 to the respondent No.5. The claim was disputed in both the cases by the respondent No.1.

3.2 The appellant - National Insurance Co. Ltd. in its written exh. 25 contended that the vehicle was insured with it for the period from 29-4-1983 to 28-4-1984 and the respondent No.1 was the insured who had taken a plea that the vehicle was sold away by him to the respondent No.5 prior to the commencement of the policy when the possession of the car was delivered to the respondent No.5 and therefore, the respondent No. had no insurable interest and therefore, the policy was void ab initio. It was further contended that the policy was void on the ground of misrepresentation and non-disclosure of material facts by respondent No.1 who declared himself falsely as the owner of the vehicle and did not disclose the transfer of the vehicle when the policy was obtained by him. It was also contended that

the original policy of insurance was transferred to the name of the respondent No.5 on 9-11-1983, and at that time, none of the parties to the transaction disclosed to the appellant - insurance company that the accident had taken place on 22nd May 1983. It was therefore contended by the appellant - insurance company that the policy as well as transfer were void ab initio and the appellant insurance company was not liable to any amount by way of compensation that may be awardable to the claimants.

3.3 The respondent No.4- The New India Insurance Co. Ltd. in its written statement at exh. 46 contended that, since as per the written statement filed by the respondent No.1 who was the original owner of the vehicle, the car in question was sold by him on 27-4-1983 to the respondent No.5 and possession thereof was handed over on the same day and receipt for full consideration of price was also passed, the policy taken out by the respondent No.4 - Company in favour of the respondent No.1 for the said vehicle lapsed as there remained no subsisting contract after the vehicle was transferred without any intimation of such transfer to the Insurance Company. It was also contended that since the driver was not the employee of the respondent No.1, as contended by the respondent No.1 in his written statement, the respondent No.4 - Insurance Company cannot be made vicariously liable for the claim. It was also contended that the claim was excessive and exaggerated.

3.4 The transferee - Swami Narayandasji having died before the service of summon, no written statement was filed by him.

3.5 The respondent No.6, who is the managing trustee of the Nilkanth Mahadev Trust, in his written statement exh. 201, denied any liability for the accident contending that the vehicle did not belong to any of the trustees or the trust.

4. The Tribunal, on the basis of the material on record, came to a finding that the accident had occurred due to the rash and negligent driving of the vehicle ambassador car No. GJD 5856 which was originally owned by respondent No.1 and later owned by respondent No.5 (since deceased). It was however held that the respondent No.1 proved that he was not vicariously liable as at the relevant time i.e. on the date of the accident (22-5-1983), he was not the owner of the said vehicle. It was further held that the appellant - original respondent No.3 - Insurance Company did not prove that the respondent No.1 had no insurable interest, and

therefore, it was not liable. The Tribunal assessed the compensation as the amounts indicated earlier and made the award in favour of both the claimants against the appellant - insurance company.

5. It was contended on behalf of the appellant National Insurance Co. Ltd. that the respondent No.1 had no insurable interest on 29-4-1983 because, according to the original owner - respondent No.1, the motor vehicle was sold on 27-4-1983 to the respondent No.5 by the respondent No.1. It was contended that since the vehicle was sold by the respondent No.1, no policy could have been taken out by the respondent No.1 who ceased to be the owner of that vehicle on 27-4-1983 and the policy taken out on 29-4-1983 was ineffective and created no liability on the part of the appellant Insurance Company. It was also contended that the respondent No.1, by taking out the policy in respect of the car which he had already sold, had played fraud upon the appellant company by falsely representing himself to be its owner and not disclosing the transfer of the motor vehicle, and therefore, the policy was void ab initio. It was also argued that the transfer of policy on 9-11-1983 in favour of the respondent No.5 by the appellant - company did not create any liability in respect of the accident, because, the policy itself was fraudulently obtained. It was also argued by the learned counsel that the driver of the motor vehicle was not impleaded as a party, and that since the Tribunal had held that the respondent no.1 was not liable, it should follow that the insurer was also not liable because in absence of any liability of the insured, the insurer cannot be held to be liable.

5.1 The learned counsel for the appellant - Insurance Company placed reliance on the following decisions in support of his contentions :-

[a] The decision in United India Insurance Co. Ltd. v. Jagatsinh Valsinh and others, reported in 1986 ACJ 951 was cited for its proposition that an insurance company cannot be made liable in absence of any liability fastened on the owner insured. It was held that the insurance is a contract of indemnity and insurance company is to indemnify the owner to the extent he is made liable, and that unless owner is made liable, the insurance company cannot be held liable.

[b] The decision in Oriental Fire & General insurance Co. v. Aminbhai Pirmohomad Master and others,

reported in 27(2) GLR 986 was cited for the proposition that if the insured is not impleaded, no award can be passed against the insurer, for there is none who can be indemnified, and that, such contention goes to the root of the case and can be raised for the first time in the appeal.

[c] A Full Bench decision of this Court in Shantilal Mohanlal v. Aher Bawanji Malde and others, reported in 26(1) GLR 465 was cited for the proposition that the insurance policy of a motor vehicle lapses on a sale or transfer of the insured vehicle and the liability of the insurer ceases unless there is an express stipulation to the contrary in the policy or the benefit conferred by section 103A of the Motor Vehicles Act is available. It was held by the Full Bench of this Court that the insurer is entitled to avoid liability against third party risk on the plea that the insured had sold the vehicle covered by the Insurance Policy before the date of the accident without intimation to the insurer. There being no subsisting contract between the insurance company and the transferee, the insurance company was not liable to indemnify the transferee, and therefore, the claimants were not entitled to recover any compensation from the insurance company.

[d] The decision in New India Assurance Co. Ltd. v. Sheela Rani and others, reported in 1999 ACJ 213 was cited to point out that, while considering the question whether on transfer of vehicle about which intimation was given though not strictly as required under section 103A and in the absence of refusal from the insurance company, the policy already given to the transferor will lapse. The Supreme Court held that it would not lapse, because, in the absence of reply by the insurance company, certificate of insurance shall be deemed to have been transferred in favour of the transferee. Referring to this judgement, the learned counsel pointed out that, in the present case, there was no communication sent either by the transferor or transferee, as required under section 103A of the Act to the Insurance Company, and therefore, there was no question of the certificate of insurance being deemed to have transferred in favour of the transferee.

6. The learned counsel appearing for the respondent No.4 - The New India Insurance Co. Ltd. contended that admittedly, the car was sold by the respondent No.1 on 27-4-1983 and therefore, he had ceased to be the owner of the car. It was argued that, after the sale of the motor vehicle, the respondent No.1 did not retain any control, custody or possession of the car and he did not even know as to who was driving the car. It was therefore contended that no vicarious liability can be foisted on the respondent No.1 as an owner or on the respondent No.4 as the insurer for any tortious act committed by an unknown person. it was further contended that, on the transfer of the motor vehicle on 27-4-1983, the privity of contract was snapped and the policy lapsed because the insurance certificate was not got transferred in favour of the respondent No.5 in respect of the policy which was issued by the respondent No.4 in favour of the respondent no.1. It was contended on the basis of the delivery note exh. 123, entries exh. 124 and exh. 125 and the deposition of the respondent No.4 at exh. 121 that, it was clearly established that the title in the motor vehicle in question had passed from the respondent no.1 to the respondent No.5 on 27-4-1983.

6.1 The learned counsel appearing for the respondent No.4, in support of her contentions referred to the decision of the Rajasthan High Court in Rajasthan State Road Transport Corporation v. Harpyari Devi and others, reported in 1986 (1) ACC 57, in which the learned Single Judge of the Rajasthan High Court held that a person though registered as owner of a vehicle may or may not be a real owner for the purpose of liability to pay compensation, and that it was the real owner i.e. a person in possession of vehicle and using it for his benefits, who is liable under Motor Vehicles Act.

7. The learned counsel appearing for the claimants contended that the Tribunal should have awarded the claim of both the claims to the full extent, because, the total claims made were quite reasonable and there was no warrant for reducing any amount. He referred to the medical evidence showing the extent of injuries to the claimants, the treatment that was taken and the permanent disability suffered by them. He also submitted that the income of the claimant was not properly worked out and future prospective income of the claimants was not properly taken into account. It was submitted that, because of the injuries suffered by him, the appellant claimant of First Appeal No. 2082 of 1994 had put in his resignation on 1-3-1993. It was submitted that, because of the nature of permanent disability, it was very

inconvenient for the said claimant to continue work which involved supervision.

8. Since the accident occurred on 22nd May 1983, the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as `the Act' for short) would be applicable for deciding this case.

8.1 Under section 2(19) of the Act, "owner" means where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle, which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement. This definition refers only to a minor and a hire-purchaser and therefore, by its very nature, is inclusive. A registered owner would obviously be an owner and what was implicit has now been made explicit in the revised definition of `owner' under section 2(30) of the Motor Vehicles Act, 1988 which, inter alia, says that owner means a person in whose name a motor vehicle stands registered. Under section 22(1), it was provided that, no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with the Chapter III and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. Section 24 provided for the manner in which registration was to be made. It laid down that an application by or on behalf of the owner of a motor vehicle for registration shall be in Form E as set forth in the First Schedule, contain the information, required by that form, and shall be accompanied by the prescribed fee. It also provided that where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purposes of this Act. It, therefore, follows that the word `owner' has its statutory significance in the context of the provisions of the Act. Under section 28, it was laid down that, subject to the provisions of section 29, a motor vehicle registered in accordance with the Chapter III in any State, shall not require to be registered elsewhere in India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout India. The owner of the vehicle was obliged to intimate his new address to the registering authority by which the certificate of registration was issued, as

provided in section 30.

8.2 Then comes the provision of section 31, with which we will be concerned. Under that provision, where the ownership of any motor vehicle registered under Chapter III was transferred, the transferor was under an obligation within 14 days of the transfer, to report to the registering authority within whose jurisdiction the transfer was affected, and to simultaneously send a copy of such report to the transferee and the transferee was also obliged to report within 30 days of the transfer about the transfer to the registering authority within whose jurisdiction he resided.

8.3 Under section 94, it was provided that no person shall use, except as a passenger, or cause or allow any other person to use a motor vehicle in a public place, unless there is, in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter VIII. Section 95 laid down requirements of policies and limits of liability. Section - 103-A (1) of the Act which relates to transfer of insurance certificate, reads as under:

"103-A :

(1) Where a person, in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter, proposes to transfer, to another person, the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, he may apply, in the prescribed form, to the insurer for the transfer of the certificate of insurance and the policy described in the certificate in favour of the person to whom the motor vehicle is proposed to be transferred, and if within fifteen days of the re-receipt of such application by the insurer, the insurer has not intimated the insured and such other person, his refusal to transfer the certificate and the policy to the other person, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred

in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer."

9. Under section 110-B, the Claims Tribunal makes an award determining the amount of compensation and it has to specify the amount which shall be paid by the insurer, owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. The word `owner' in section 110-B obviously includes the person whose name continues to be shown as registered owner in the certificate of registration in context of the liabilities of the registered owner under the Act and the Rules made thereunder and the transfer of title under section 19 of the Sale of Goods Act to the purchaser will not absolve him from the liabilities under the Act and the Rules which continue to bind him until he adopts the statutory course of change of his name by getting the transfer registered in the records of the registering authority. Any other course would set free the original owners of their statutory duties and liabilities in respect of the registered motor vehicles and harm the public interest which is sought to be protected by this beneficial legislation.

9.1 The definition of owner in section 2(19) is not exhaustive. The word `owner' has to be construed in a wider sense in the facts and circumstances of a given case. The owner of the vehicle applies for its registration in Form E read with section 24(1) in which particulars of person to be registered as registered owner are to be mentioned. The registration certificate in Form G read with section 24(2) shows the name and other particulars of a registered owner of the motor vehicle. The certificate of registration, as noted above, is effective all throughout India and if the owner changes his address in the registration certificate, he is required to intimate his new address to the other registering authority.

9.2 Under section 94 of the Act, it is not the owner alone who has to take out the insurance policy. Whenever, a motor vehicle is to be sued in a public place by any person (except as a passenger), he is under a statutory obligation not to use it or cause it to be used unless there is in relation to the use of the motor vehicle the policy of insurance complying with the provisions of Chapter VIII of the Act. Under section 95(5) of the Act, a person issuing policy of insurance is liable to idemnify a person or classes of persons

specified in the policy in respect of any liability which the policy purports to cover. There is nothing in section 94 to indicate that the owner of the motor vehicle alone should take out the policy of the insurance. Any other person also can take out the policy if he uses or causes or allows any other person to use a motor vehicle. It follows that a registered owner who has sold of a car to someone is causing or allowing such other person to use the vehicle in a public place and therefore, can take out an insurance policy for the use of that motor vehicle by the purchaser himself or at the instance of such purchaser. Even if the motor vehicle is already insured, the registered owner who sells it can legitimately take out an insurance policy for that motor vehicle even after the sale because he is a person who allows or causes the motor vehicle to be used in a public place by the vendee. An owner, on ceasing to be the owner does not in any manner become disentitled to take out an insurance policy for such motor vehicle. Being a registered owner whose name still continues in the certificate of registration as the owner, since the transfer is not yet effected as per section 31 in the record of the registering authority, he has sufficient insurable interest due to the liabilities that attach a registered owner under the Act and the Rules. Therefore, it cannot be said that the respondent No.1 who was the registered owner of the vehicle was disqualified from taking out the policy exh. 138 with the respondent No.3 on 29-4-1983, because, he had sold away the motor vehicle on 27-4-1983. The policy of insurance insures "the person or classes of persons" specified in the policy under section 95(1)(b) against any liability which may be incurred by such insured persons and not just owners.

9.3 A registered owner who sells the motor vehicle continues to be shown as registered owner even after the sale of the motor vehicle by him because the transfer is to be reported in 14 days by the transferor to the registering authority within whose jurisdiction the transfer is effected and the transferee has also to report the transfer to the registering authority within 30 days as required by section 31. He has to forward the registration certificate of the motor vehicle and the copy of the report sent by the transferor to get the particulars of transfer of ownership entered into that registration certificate. The continuance of the name of the original owner as the registered owner in the certificate of registration entails legal consequences under the Motor Vehicles Act, because, the registering authority would continue to deal with the owner whose name is registered as such in the certificate of

registration e.g. by issuance of notice under section 34(3) and the liability of the registered owner under the Act and the Rules would continue to exist. The records maintained by the registering authority are public records. Any person may apply for copies of the particulars of any motor vehicle registered in the records maintained by a registering authority and such authority may in its discretion supply such copies for a fee under Rule 64 of the Bombay Motor Vehicles Rules. Therefore, continuance of the name entered in the registration certificate as the owner of the vehicle as per the records maintained by the registering authority by virtue of the registered owner and the transferee not intimating the transfer of vehicle under section 31 to the registering authority would justify all those not having the knowledge or notice of transfer to assume that the registered owner continues to be the real owner of the vehicle. The owner who has sold the vehicle, but not followed the procedure for getting the transfer of vehicle registered under section 31, would expose himself to a penalty under sub-section 1(A) of section 31 and if he does not pay the penalty, then to punishment for contravention of the provision of section 112 as laid down in the proviso to section 31 (1A) of the Act. It will not be a defence for him that he does not fall within the expression `owner' since he had transferred the vehicle. Thus, the meaning of the word `owner of the vehicle' will depend on the facts and circumstances of the case since its definition u/s 2(19) is not exhaustive.

10. There is a statutory obligation cast on the owners of the motor vehicles under section 22 not to cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with the provision of Chapter III and the certificate of registration is valid. Therefore, so long the name of the owner continues in the public record as the registered owner of the vehicle, there would be a presumption that he continues to remain the owner for the purpose of the Act and the Rules though he may have sold the vehicle and so far as the purchaser is concerned, he has ceased to be the owner in context of the provisions of the Sale of Goods Act. The obligation of the registered owner under the Motor Vehicles Act and the Rules made thereunder go beyond mere private rights and affect the third parties when the motor vehicle is delivered to the transferee for being used in a public place. The law today takes account of the functional aspect of the property privately owned by giving to such

property an increasingly public law character. Functions to which the property owned can be put bring into existence complementary legal rules developed from the law of obligations. Thus, ownership of a motor vehicle is not just a matter of private rights over its corpus but carries with it legal obligations of the owner when the vehicle is put to use or is caused to be put to use in a public place. Certain legal obligations of such owner extend even after he sells the property as in the case of the requirement of section 31 whereunder the owner is required to take steps for getting the transfer recorded in the register of motor vehicles.

11. There is therefore no substance in the contention that the respondent No.1, who had sold the car on 27th April 1983 could not have taken out the insurance policy exh. 138 on 29-4-1983 from the respondent No.3 or that after the vehicle was transferred on 27-4-1983, the respondent No.1 was no longer liable even though his name continued as a registered owner in the record. Even after the policy was transferred in the name of the vendee on 9-11-1983, the liability that had already arisen on 22-5-1983 continued to subsist.

12. The vehicle belonged to the respondent No.1 and was insured with the respondent No.4 - The New India Assurance Co. Ltd. under policy at exh. 127, which was valid for the period from 31-7-1982 to 30-7-1983. When the motor vehicle was sold to the respondent No.5 (since deceased) by the respondent No.1 on 27-4-1983, it was covered by the insurance policy exh. 127. The date of the accident that took place on 22-5-1983 falls within the validity period of that policy exh. 127. The defence of the respondent No.4 - insurance company is that since the vehicle was sold on 27-4-1983, the policy exh. 127 lapsed and therefore, respondent No.4 was not liable under it.

12.1 The policy exh. 127 was valid upto 30-7-1983. The question is whether the respondent No.4 - insurance company continued to be liable after 27-4-1983 when the respondent No.1. As per the evidence on record, the motor vehicle was cold to the respondent No.5 on 27-4-1983, but the transfer was effected in the record of the registering authority only on 9-11-1983. This is borne out from the register of motor vehicle, a copy of which is at exh. 108. The motor vehicle was transferred to the name of the respondent No.1 from the earlier owner on 22-7-1980 and was transferred to the name of the respondent No.5 (since deceased) on 9-11-1983, as per the entries made in the register exh.108. The respondent

No.1 was required by section 31 to report to the concerned registering authority in 14 days of the transfer and send a copy of the said report to the transferee, and since this was not done, the respondent no.1 continued to be the registered owner of the vehicle till 9-11-1983. The intimation of transfer of ownership was required to be given by the respondent No.1 in the prescribed Form "T.T.O.", as provided in Rule 60 of the Bombay Motor Vehicle Rules. The insurance of the motor vehicle was made compulsory against the third party risk under the provisions of Chapter VIII of the said Act. Therefore, once the insurance company had undertaken liability to third party incurred by the person specified in the policy, the third party's right to recover any amount under or by virtue of the provisions of the Motor Vehicle Act, is not affected by any condition in the policy. Therefore, even though the respondent No.1 did not intimate about the sale transaction to the insurer, as required by section 103-A, and the accident took place subsequent to the sale of the motor vehicle by the respondent No.1 to the respondent No.5, the liability of the respondent No.4, insurer for the third party risk subsisted notwithstanding any condition to the contrary that may have been incorporated in its policy.

13. The Supreme Court in G. Govindan v. New India Assurance Co. Ltd., reported in AIR 1999 SC 1398, has held that both under the old Act and the new Act, the legislature was anxious to protect the third party interest and that, what was implicit in the provisions of the old Act is now made explicit presumably in view of the conflicting decisions on this aspect among various High Courts. The Supreme Court approved the ratio laid down by the Andhra Pradesh High Court in Madineni Kondaiah and others v. Yaseen Fatima and others, reported in AIR 1986 A.P. 62, in which it was held that so far as the third party risk is concerned, the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under section 29A and 31 read with section 94 of the Act. Till he complies with the requirement of section 31, the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third party risk. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the transitional period and accordingly, till the compliance of section 31, the liability of the transferor subsists and the policy is in operation so far as it relates to the third party risk. It was held by the Supreme Court that the ratio laid down by the Andhra

Pradesh High Court in Kondaiah's case (supra), advances the object of the Legislature to protect third party interest. The Supreme Court held that the ratio laid down in the Full Bench decision of the Delhi High Court in Anand Sarup Sharma v. P.P. Khurana and others, reported in AIR 1989 DELHI 88 and National Insurance Co. Ltd. v. Mallikanj reported in AIR 1990 Karnataka 166 that the third party liability of the insurer comes to an end on transfer of vehicle by the insured to someone else unless the procedure prescribed for transfer of policy was fulfilled, which was contrary to the ratio of the decision of the Andhra Pradesh High Court, was not correct. In view of the decision of the Supreme Court in Govindan's case (supra), the ratio of the decision of the Full Bench of this Court in Shantilal Mohanlal and another v. Aher Bawanji Malde and others, reported in 26(1) GLR 465, to the effect that, after sale or transfer of the motor vehicle by its owner without informing the insurer, the insurance policy lapses and the liability of the insurer therefore ceases and the insurance company is entitled to avoid liability against the insured as there was no subsisting contract, stands overruled and is no longer a good law. The decisions of the Full Bench in Shantilal's case (supra) and the decision of the Full Bench of the Delhi High Court in Anand Sarup's case (supra) were followed by the Full Bench of the Karnataka High Court in Mallikanj's case (supra) by the Full Bench of that High Court and the Supreme Court in Govindan's case expressly overruled the Full Bench decisions of the Karnataka and Delhi High Courts. It therefore follows that the liability of the respondent No.1 as the registered owner of the motor vehicle continued even after the motor vehicle was sold to the respondent No.5 till the provisions of section 31 were complied with on 9-11-1983 and therefore, on the date of the accident i.e. 22-5-1983, the respondent No.1 as the registered owner of the vehicle was liable for the accident caused due to the use of the motor vehicle by virtue of the purchaser being authorised to use it after it was sold on 27-4-1983. The liability of the respondent No.4 - insurance company also continued, after the vehicle was transferred, on the ratio of the decision of the Supreme Court in Govindan's case (supra). Therefore, both the respondent No.1 who was the registered owner of the vehicle and the respondent No.4 insurance company were liable to pay the compensation to the claimants for the accident caused by the use of the motor vehicle.

14. In view of the above discussion, since the motor vehicle was insured with the appellant - insurance company as well as the respondent No.4 - insurance

company at the relevant time i.e. on 22-5-1983 when the respondent No.1 was continued as its registered owner, the respondent No.1, the appellant (original respondent No.3) National Insurance Co. Ltd. as well as the respondent No.4 - The New India Insurance Co. Ltd. all are jointly and severally liable to pay compensation to both these claimants.

15. We have carefully gone through the material evidence having bearing on the quantum aspect of the matter. It appears from the evidence on record that the claimant (First Appeal No. 2082/94) had suffered serious injury on his forehead, ribs, elbow, pelvis bone and left leg. He remained as an indoor patient upto 30th May 1983, and thereafter, was virtually bedridden for four and a half months. Dr. Atul Parikh, in his deposition at exh. 150, has stated that, on account of the injury suffered by him, there was rupture of urethra. The said claimant had suffered bodily disability of 15% as a whole. In his certificate at exh. 117, he had stated as follows :

> "To me he has developed sexual disturbance amounting to complete loss of sexual life, secondary to damage in penile muscular structure with urethra disruption and haematoma involving nerve eregenties leading to loss of sexual excitement. Haematuria is secondary to urethral partial disruption and has developed narrowing at membranobulbous junction."

15.1 The Tribunal has worked out permanent disability of this claimant due to the injury of urethra and fractures sustained by him, particularly of the pelvic bone, to 20% of the whole body. The Tribunal however awarded only a sum of Rs.12,500=00 under the head pain, shock and suffering despite the serious nature of injuries, the type of permanent disability and the prolonged treatment that he had to undergo. This claimant had asked for Rs.70,000=00 under the head pain, shock and suffering. Having regard to the facts of the case, in our opinion, it would be appropriate to award a sum of Rs.50,000=00 under this head, of which Rs.12,500=00 has been awarded. This claimant will therefore be entitled to a further sum of Rs.37,500=00 under the head of pain, shock and suffering, and the award made in his favour will be modified upwards to this extent.

15.2 It was tried to be contended that the income of this claimant - Shri Krushnakumar Kittu Nair has not been

properly worked out. There is no substance in this contention, because, as noted by the Tribunal in paragraph 18 of its judgement, there is documentary evidence in form of salary certificate at exh. 85, which showed that he was getting a salary of Rs.2,700=00 per month. He was also getting 8.33% bonus. Even the deposition of Bhadresh Shah at exh. 95 shows that he was earning only Rs.2,700=00 even on 25-1-1990. Merely because the claimant had chosen to resign on 1-3-1993 i.e. after the award of the Tribunal as pointed out by the learned counsel for the claimant, it cannot be said that the resignation was given because he could not work due to the accident. In fact, he did work for nearly ten years, in the same post till he resigned. Therefore, we find no valid ground for altering the amount assessed under the head economic loss. The amounts which are awarded under other heads such as medical expenses, special diet, attendance charges etc. do not call for any interference by this Court, because, the figures have been reached on the basis of the material on record.

16. So far as the claimant of First Appeal No. 2076 of 1994 is concerned, she was a young girl of six years of age at the relevant time. She suffered a fracture of femur bone and a permanent disability of 6% as per the medical evidence. Because of shortening of her leg by 1.5 c.m., she would suffer adversely in her marital prospects with the attendant embarrasment of a limb in the walk. She has been awarded only Rs.12,500=00 under the head pain, shock and suffering as against her claim of Rs.30,000=00 under that head. Having regard to the facts and circumstances of the case, it appears to us that a total sum of Rs.30,000=00 as claimed by her should be awarded under the head pain, shock and suffering. Therefore, she will be entitled to an additional amount of Rs.17,500=00 under this head and the award would stand modified accordingly.

16.1 The award of claim under other heads to this claimant does not call for any interference.

17. We therefore pass the following order :-

[A] The appeals of the claimants being First Appeals No. 2076 of 1994 and No. 2082 of 1994 are partly allowed. The respondent No.1 i.e. the original owner as well as the respondent No.4 i.e. The New India Insurance Co. Ltd. and the respondent No.3 i.e. The National Insurance Co. Ltd. will all be jointly and severally liable to pay the compensation awarded to the claimants,

including the further amounts which are being allowed to them in these appeals.

[B] The claimant - Shri Krushnakumar Kittu Nair [the appellant of the First Appeal No.2082 of 1994] will be entitled to recover the entire amount awarded by the Tribunal as modified by this order by adding a sum of Rs.37,500=00 with interest and proportionate costs thereon from the respondents No. 1, 3 and 4 who will be jointly and severally liable to pay the entire amount awarded by the Tribunal as modified herein.

[C] The claimant - minor Daksha Nair [First Appeal No. 2076 of 1994] will also be entitled to recover the entire amount awarded by the Tribunal, as modified by this order by adding a sum of Rs.17,500=00 with interest and proportionate costs thereon from the respondents Nos. 1, 3 and 4 who will be jointly and severally liable to pay the entire amount awarded by the Tribunal as modified herein.

[D] The interest will be payable on the additional amounts awarded in these two claimants' appeals to them at 12% per annum from the dates of their claim petitions.

[E] The amounts which may have been invested pursuant to the awards will be paid to the claimants on the maturity of the investments.

Both the claimants' appeals are partly allowed accordingly with proportionate costs.

17.2 The appeals of National Insurance Co. Ltd. (original respondent No.3) being First Appeal No. 599 of 1991 and No. 600 of 1991 are both dismissed with no orders as to costs.

18. The learned counsel for the respondent No.3 National Insurance Co. Ltd. states that the additional amount which has been ordered to be paid to the claimants in these appeals will be deposited by the insurance company in the office of the Tribunal within 12 weeks from today. The amounts so deposited will be paid to the claimants by the Tribunal.

FEBRUARY, 20, 2001 [R.K.ABICHANDANI, J.]

[A.M.KAPADIA, J.]

parmar*